

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Filed Under Seal

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UNITED STATES OF AMERICA,

-against-

**ORDER**  
17-CR-587 (JMA)

CHRISTOPHER MCPARTLAND, and  
THOMAS J. SPOTA,

Defendants.

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**AZRACK, United States District Judge:**

I will permit Kelly to testify about the Olivia investigation and his belief that the Olivia investigation was retaliatory. I will also allow Kelly to testify that he overheard Loeb tell Miguelez that he had been beaten up. I am excluding Loeb's statement that Burke said the DA is my best friend.

Kelly, who played no role in the assault, had relevant information about the Burke assault and chose to stay quiet. The reasons he stayed quiet are relevant to complete the story of charged crimes here and to explain why police officers feared Burke and feared disclosing the truth about the assault.

I will permit Kelly to testify about Loeb's statements to Miguelez that he was assaulted. I find that Loeb's statement that Kelly overheard is admissible as an excited utterance. Additionally, even if this was not an excited utterance, the fact that Kelly overheard Loeb state that he had been assaulted and then subsequently did not reveal Loeb's statement has independent evidentiary value.

I am, however, excluding, under Rule 403, Loeb's statement that Burke said the DA is my best friend.

**SO ORDERED.**

Dated: November 19, 2019  
Central Islip, New York

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/s/ (JMA)  
JOAN M. AZRACK  
UNITED STATES DISTRICT JUDGE